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AFTER *AGUILAR* v. *FELTON*: CHAPTER 1 SERVICES TO NONPUBLIC SCHOOLCHILDREN

ORIGINAL

A REPORT

PREPARED FOR THE

SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

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INTRODUCTION

On July 1, 1986, the Supreme Court in Aguilar v. Felton held that the method most commonly employed by local educational agencies to serve private schoolchildren under the Chapter 1 program -- that of public school teachers providing instructional services on the premises of nonpublic sectarian schools -- was unconstitutional.

The Chapter 1 program of the Education Consolidation and Improvement Act is the largest Federal elementary and secondary school aid program, distributing over $3.6 billion to school districts to provide programs to meet the needs of disadvantaged children. Since its enactment as Title I of the Elementary and Secondary Education Act in 1965, this legislation has required school districts to make provision for serving children in nonpublic schools.

The Felton decision, handed down just weeks before the beginning of the school year, understandably posed difficult logistical, legal, and practical problems for public and private school officials around the country, most of which were required to implement it at once in their Chapter 1 program for the approaching school year. This meant that school districts have been groping for guidance about acceptable, workable ways to serve nonpublic school children that comply with Felton and with the Chapter 1 requirements.

The Committee comprehends the perplexing situation facing school administrators and would like to do what is possible to assist them. We understand that many questions remain, and we appreciate that this year represents a difficult period of transition. In order to help provide some answers in this discussion, we asked the Congressional Research Service of the Library of Congress to prepare both a legal analysis of constitutional guidelines for providing Chapter 1 services and another analysis of permissable uses of funds under Chapter 1 and how these fit into constitutional guidelines. In addition, we asked the Department of Justice and the Department of Education to comment on the legal analysis, so that school officials would have the benefit of a set of opinions that have the agreement of these Departments. All of these documents, plus the Department of Education's Felton guidance document, appear in Part 1 of this print.

Part 2 approaches the situation from the practical standpoint of describing what various school districts are doing to comply with Felton in those situations that

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appear to be working. To gather this information, the Subcommittee staff conducted a telephone survey of school districts. We offer these findings in the hope that they may benefit school districts where the arrangements are still unsettled.

When twenty years of experience with the Chapter 1 program are rearranged within a few months, difficulties are to be expected. We encourage the public and private school officials to do their best to comply with the law and continue offering quality services to disadvantaged children in public and private schools.

Augustus F. Hawkins
Chairman

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PART 1: LEGAL AND NON-REGULATORY GUIDANCE

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Congressional Research Service
The Library of Congress

Washington, D.C. 20540

CONSTITUTIONAL GUIDELINES FOR THE PROVISION OF SERVICES UNDER CHAPTER 1 OF THE ECIA TO ELIGIBLE CHILDREN WHO ATTEND PRIVATE SECTARIAN SCHOOLS

David M. Ackerman
Legislative Attorney
American Law Division
January 7, 1986

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CONSTITUTIONAL GUIDELINES FOR THE PROVISION OF SERVICES
UNDER CHAPTER 1 OF THE ECIA TO ELIGIBLE CHILDREN WHO
ATTEND PRIVATE SECTARIAN SCHOOLS

INTRODUCTION

Chapter 1 of the "Education Consolidation and Improvement Act of 1981" [1/] (ECIA) provides federal assistance to state and local education agencies to meet the special educational needs of disadvantaged children. The program since its inception in 1965 as Title I of the "Elementary and Secondary Education Act" [2/] has required that services be provided to eligible children attending both public and nonpublic schools, including nonpublic sectarian schools. However, on July 1, 1985, the Supreme Court in Grand Rapids School District v. Ball, 105 S.Ct. 3216 and Aguilar v. Felton, 105 S.Ct. 3232 held the public subsidy of remedial and enrichment instructional services by public school teachers on the premises of nonpublic sectarian schools to violate the establishment of religion clause of the First Amendment. Because that method of providing services to eligible private schoolchildren has been the method most commonly employed by local educational agencies (LEAs) under Chapter 1, the decisions have occasioned considerable uncertainty.

The purpose of this report is twofold. First, the report summarizes the Grand Rapids and Aguilar decisions and briefly analyzes their scope.

1/ 20 U.S.C. 3801 et seq.

2/ P.L. 89-10, title 1 (April 11, 1965); 79 Stat. 27.

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Second, the report itemizes the kinds of services that are authorized to be or have in the past been provided to private schoolchildren under Chapter 1 and in summary fashion indicates their constitutional status in light of these and related Supreme Court decisions.

SUMMARY OF GRAND RAPIDS AND AGUILAR DECISIONS

At issue in Grand Rapids School District v. Ball, supra, were two programs in which the local educational agency provided certain courses for private school students, most of whom attended sectarian schools. In the first, denominated the "Shared Time" program, the LEA leased classroom space in private schools and provided full time public teachers to give instruction in such supplemental subjects as art, music, physical education, industrial arts, remedial and enrichment math, and remedial and enrichment reading. The courses were integrated into the curricula of the private schools and the program employed a "significant" number of teachers who previously had been employed by those schools (approximately 10 percent). In the second program, denominated the "Community Education" program, the LEA leased classroom space in the private schools and provided part-time public teachers to direct an array of extracurricular and enrichment opportunities for the students attending those schools after the conclusion of the regular school day. Among the courses offered were Arts and Crafts, Home Economics, Spanish, Gymnastics, Yearbook Production, Christmas Arts and Crafts, Drama, Newspaper, Humanities, Chess, Model Building, and Nature Appreciation. Virtually all of the teachers employed on a part-time basis for the Community Education program were teachers employed by the private schools during the regular school day. In both programs the LEA required that the classrooms used be free of religious symbols, and in both pro-

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grams the LEA provided all of the necessary supplies, materials, and equipment. Student participants in the programs were invariably the students who otherwise were in attendance at a particular school.[3/]

In Aguilar, similarly, the program at issue involved the public subsidy of supplemental courses taught by public teachers on the premises of private schools, most of which were sectarian. The City of New York provided such services as remedial reading, reading skills, remedial math, English as a second language, and guidance services to eligible children attending private schools in the City. As in the Grand Rapids' Shared Time program, these services were provided on the premises of the sectarian schools, the personnel involved in the services were full-time employees of the public school system, the materials and equipment used in the courses were provided entirely by the public school system, and the classrooms used were required to be free of religious symbols. In contrast to the Grand Rapids program, however, the funds used to subsidize these services were federal funds made available to the City under Chapter 1 of the ECIA. In futher contrast the City explicitly instructed the personnel involved in the program to avoid all involvement with religious activities conducted

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3/ The Shared Time and Community Education programs were available at both elementary and secondary private schools. However, by the time of the appeal to the Supreme Court, only the Shared Time and Community Education classes at the elementary level and a remedial math Shared Time class at the secondary level were still at issue.

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within their schools and to keep contact with sectarian school personnel to a minimum. In addition, the City set up a supervisory system which included unannounced visits by public school supervisors to the Chapter 1 classes in the private schools.

The Supreme Court held all of these programs unconstitutional[4/] as violations of the establishment of religion clause of the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion . . . ."[5/] In both cases the Court analyzed the programs' constitutionality using the tripartite test it first articulated in Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971):

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster "an excessive government entanglement with religion." [6/]

4/ The Court divided 5-4 on the constitutionality of the Shared Time and Chapter 1 programs and 7-2 on the constitutionality of the Community Education program.

5/ Though by its terms applicable only to the federal government, the establishment clause has been held to be applicable to the states under the due process clause of the Fourteenth Amendment--" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." Everson v. Board of Education, 330 U.S. 1 (1947).

6/ To pass muster under this this test a government program must meet every aspect.

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The secular purpose requirement the Court found to be met in both cases. But in Grand Rapids it held that the Shared Time and Community Education programs had an impermissible primary effect of advancing religion, and in Aguilar the Court held New York's Chapter 1 program to involve excessive administrative entanglement between church and state.

In Grand Rapids the Court noted that 40 of the 41 private schools in which the Shared Time and Community Education programs operated were religiously affiliated and that the trial court had found these schools to be pervasively sectarian: "At the religious schools here . . . . the secular education those schools provide goes hand in hand with the religious mission that is the only reason for the schools' existence." As a result, the Court held the two programs to impermissibly advance religion in three different ways. "First," the Court said, "the teachers participating in the programs may become involved in intentionally or inadvertently inculcating particular religious tenets or beliefs." The Court observed that virtually all of the schools were pervasively religious, that all of the part-time Community Education instructors and a significant portion of the full-time Shared Time instructors were concurrently or formerly teachers employed by the religious schools, and that the public school district made no effort to monitor the content of the courses as taught. Thus, it held, there was a "substantial risk" that "teachers in such an atmosphere may well subtly (or overtly) conform their instruction to the environment in which they teach, while students will perceive the instruction provided in the context of the dominantly religious message of the institution, thus reinforcing the indoctrinating effect." Such government-financed indoctri-

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nation into the beliefs of a particular religious faith, the Court said, is absolutely prohibited by the establishment clause.

Secondly, the Court found, "the programs may provide a crucial symbolic link between government and religion, thereby enlisting -- at least in the eyes of impressionable youngsters -- the powers of government to the support of the religious denomination operating the school." Children in their formative years, it said, are unlikely to distinguish between the publicly sponsored classes and the privately sponsored classes taught within the same institution and thus are likely to perceive the programs as involving government endorsement of each school's religion. Such a "symbolic union of government and religion in one sectarian enterprise," the Court held, "is an impermissible effect under the Establishment Clause."

Finally, the Court held, "the programs in effect subsidize the religious functions of the parochial schools by taking over a substantial portion of their responsibility for teaching secular subjects." Though recognizing that the subjects involved here were supplemental to the schools' regular curricula, the Court asserted that there was no "principled basis" by which it could distinguish between these courses and other secular subjects taught in the schools. To permit aid here, the Court held, would permit government to "become the prime supporter of the religious school system" by gradually taking over the entire secular curriculum of the religious schools.

Because it found the Shared Time and Community Education programs to have an unconstitutional primary effect of promoting religion, the Court in Grand Rapids did not address whether the programs precipitated excessive entanglement between church and state. But that aspect of the constitutional

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test proved decisive in Aguilar. As in the Grand Rapids programs, most of the private school children taking part in New York City's program attended schools that had a "pervasively sectarian environment." New York City argued, however, that unlike Grand Rapids it took specific steps to be sure its Chapter 1 classes were free of religious content. It instructed its personnel to avoid all involvement with religious activities in the schools to which they were assigned; it directed them to keep contact with private school personnel to a minimum; and, most important, it set up a supervisory system involving unannounced classroom visits by field personnel. These measures, the City said, gave assurance that its Chapter 1 classes would not be used to inculcate religion. But without passing on the primary effect question, the Court said that very system of monitoring the content of the Chapter 1 classes within the sectarian schools excessively entangled church and state, in violation of the establishment clause. Agents of the state, the Court said, had to "visit and inspect the religious school regularly, alert for the subtle or overt presence of religious matter in title I classes"; the religious schools had to accede to the determinations of such agents as to what is and is not a religious symbol and thus off limits in a Chapter 1 classroom; and public and private administrators and teachers had to work closely together to make the program work. Such "detailed monitoring and close administrative contact," the Court held, violated an underlying objective of the establishment clause "to prevent, as far as possible, the intrusion of either (church or state) into the precincts of the other."

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The principle that church and state "should not become too closely entangled . . . in the administration of assistance," the Court said, is rooted in two concerns:

> When the State becomes enmeshed with a given denomination in matters of religious significance, the freedom of religious belief of those who are not adherents of that denomination suffers, even when the governmental purpose underlying the involvement is largely secular. In addition, the freedom of even the adherents of the denomination is limited by the governmental intrusion into sacred matters. "[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." 105 S.Ct. at 3237, quoting McCollum v. Board of Education, 333 U.S. 203, 212 (1948).

Thus, despite the "well-intentioned" nature of the City's Chapter 1 program, the Court held, it was constitutionally flawed by the "excessive entanglement of church and state in (its) administration . . . ."

SCOPE OF THE DECISIONS

Grand Rapids and Aguilar well illustrate the Scylla and Charybdis character of the limits imposed on public aid to sectarian schools by the establishment clause. If a governmental agency channels public aid directly to a sectarian school and that aid is not by its nature or as the result of controls imposed by the agency limited to secular use, the aid program -- as in Grand Rapids -- is likely to be found by the courts to have a primary effect of advancing religion and thus to be unconstitutional. If, on the other hand, the agency imposes a strict monitoring system to be sure that the aid provided is not used for religious purposes, the aid program -- as in Aguilar -- is likely

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to be found to involve excessive entanglement between church and state and also to be unconstitutional.

Both Grand Rapids and Aguilar appear to reaffirm the implications of several earlier Court decisions that direct public subsidy of most instructional and related services to children attending sectarian elementary and secondary schools is unconstitutional if the services are provided on the premises of the sectarian schools but constitutional when the services are provided off the premises of the sectarian schools. In addition, the decisions appear to leave intact prior rulings holding public subsidies of certain nutritional, diagnostic, health, and testing services to such children to be constitutional even when provided on the premises of the schools attended.

CONSTITUTIONAL STATUS OF PARTICULAR SERVICES

Neither the Chapter 1 statute nor its implementing regulations for grants to LEAs [7] specify in concrete detail the services for which its funds may be used. Instead, the statute mandates generally that grants under it are to be used "to meet the special needs of educationally deprived children" and it includes within that mandate "special educational services and arrangements" for eligible children who are enrolled in private elementary and secondary schools.[8] What can constitute Chapter 1 services, in other words, depends in large measure on the resourcefulness of LEAs in devising programs and projects appropriate to their circumstances.

7/ 34 C.F.R. Part 200.

8/ 20 U.S.C. 3801 and 3806(a), respectively.

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Nonetheless, Chapter 1 does list general categories of services for which its funds can be used, and more specific illustrations can be gleaned from several program evaluations that have been done of Title I Chapter I programs.[9/] Secretary of Education William Bennett's August 15, 1985, communication to state education agencies regarding the implementation of Aguilar contains a few additional examples of possible Chapter 1 services to private school children.

The following list of possible Chapter 1 services to children attending sectarian schools, in other words, does not purport to be exhaustive. The intent is simply to provide some concrete guidance on the constitutional status of services fundable under Chapter 1 that might be provided to eligible children attending sectarian schools. It should also be noted that the indications of constitutionality regarding the following services have no bearing on the provision of services to eligible children at private schools that are not pervasively sectarian. Where the schools involved are not religious in nature, no constitutional question arises under the establishment clause regarding the provision of Chapter 1 services.

9/ Wayne Riddle, Specialist in Education, Education and Public Welfare Division, CRS, provided material assistance in identifying and compiling this list of services. The program evaluations used in compiling this list were as follows: National Institute of Education, "Compensatory Education Services" (July 31, 1977); System Development Corp., "A Study of Compensatory and Elementary Education: The Sustaining Effects Study" (Jan., 1983); Advanced Technology, Inc., "Local Operation of Title I, ESEA 1976-1982: A Resource Book" (June, 1983); and Elizabeth R. Reisner, "The Use of Computers in Instruction Supported under Chapter 1 of the Education Consolidation and Improvement Act" (Sept., 1983).

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CHAPTER 1 SERVICES TO SECTARIAN SCHOOLCHILDREN	CONSTITUTIONAL REQUIREMENTS
Diagnostic testing for Chapter 1 eligibility purposes	Can be done on the premises of sectarian schools (Committee for Public Education v. Regan, 444 U.S. 647 (1980))
Health services (physician, nursing, dental, optometric)	Can be done on the premises of sectarian schools (Wolman v. Walter, 433 U.S. 229 (1977))
Nutrition services	Can be provided on the premises of sectarian schools (Wolman, supra; Lemon v. Kurtzman, 403 U.S. 602 (1971); Meek v. Pittenger, 421 U.S. 329 (1975))
Diagnostic speech and hearing services	Can be provided on the premises of sectarian schools (Wolman, supra)
Therapeutic speech and hearing services	Must be provided at religiously neutral sites off the premises of sectarian schools (Wolman, supra)
Guidance, counseling and therapeutic psychological services	Must be provided at religiously neutral sites off the premises of sectarian schools (Wolman, supra; Aguilar, supra)
Instructional materials, supplies, and equipment (including books, workbooks, projectors, tape recorders, science kits, etc.)	With the possible exception of textbooks, cannot be provided for use in instructional programs offered on the premises of sectarian

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CHAPTER 1 SERVICES TO SECTARIAN SCHOOLCHILDREN	CONSTITUTIONAL REQUIREMENTS
	(Cont.) schools (Meek v. Pittenger, 421 U.S. 329 (1976); (Wolman, supra; Aguilar, supra; Grand Rapids, supra) 10/
Remedial and enrichment instruction	
(1) by teachers and aides otherwise employed by the sectarian schools	Not permitted (Lemon v. Kurtzman, supra; Grand Rapids, supra)
(2) by public teachers and aides	Services must be provided at religiously neutral sites off the premises of the sectarian schools, such as public schools, leased facilities, or mobile vans (Meek, supra; Grand Rapids, supra; Aguilar, supra)
(3) via radio or television	No Supreme Court decision directly on point
(4) via computer	No Supreme Court decision directly on point
(5) via telephone	No Supreme Court decision directly on point

10/ The Court has repeatedly held the provision of instructional materials such as workbooks, maps, globes, science kits, etc., to be unconstitutional when provided directly to sectarian schools or to sectarian schoolchildren for use in the sectarian schools. Meek v. Pittenger, 421 U.S. 329 (1976); Wolman, supra; Aguilar, supra; Grand Rapids, supra. At the same time it has repeatedly upheld the loan of secular textbooks to sectarian schoolchildren for use in sectarian school classes. Board of Education v. Allen, 392 U.S. 326 (1968); Meek, supra; Wolman, supra. Grand Rapids and Aguilar both involved the provision of instructional materials, including textbooks, for use in courses taught by public personnel on the premises of sectarian schools. In holding the programs unconstitutional, the Court did not identify any elements which, if considered separately, might be constitutional. The question, thus, seems to be whether textbooks could be made available for use by sectarian schoolchildren for Chapter 1 purposes apart from off-premises instructional services.

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CHAPTER 1 SERVICES TO SECTARIAN SCHOOLCHILDREN	CONSTITUTIONAL REQUIREMENTS
Transportation of eligible children to Chapter 1 sites	Permitted (Everson v. Board of Education, 330 U.S. 1 (1947); Wolman, supra)
Construction and renovation of facilities used for Chapter 1 services	Must not involve sectarian facilities (Committee for Public Education v. Nyquist, 413 U.S. 756 (1973)

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January 7, 1986

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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 18, 1986

Honorable Augustus F. Hawkins
Chairman
Subcommittee on Elementary, Secondary,
and Vocational Education
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of January 13, 1985, requesting our comments on an opinion prepared by the Congressional Research Service (CRS) on the permissible use of federal funds, under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (the Act), for activities benefiting private school students. As the CRS opinion points out, the Act requires the provision of federal assistance to state and local educational agencies (LEAs) to meet the needs of educationally deprived children enrolled in private schools. However, Supreme Court decisions interpreting the Establishment Clause of the First Amendment have limited the manner in which such federal assistance may be provided to sectarian private schools. Most recently, the Court's decision last summer in Aguilar v. Felton, ___U.S.___, 105 S. Ct. 3232 (1985), barred the use of federal funds to provide remedial, clinical and guidance services by public school teachers on the premises of parochial schools.

The CRS opinion analyzes the Court's holding in Aguilar, and in another case decided at the same time, Grand Rapids School District v. Ball, ___U.S.___, 105 S. Ct. 3216. It concludes that these two cases

> appear to reaffirm the implications of several earlier Court decisions that direct public subsidy of most instructional and related services to children attending sectarian elementary and secondary schools is unconstitutional if the services are provided on the premises of the sectarian schools but constitutional when the services are provided off the premises of the sectarian schools.

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CRS opinion at 9 (emphasis in original). In addition, the CRS opinion concludes that the two decisions "appear to leave intact" prior Supreme Court rulings upholding the provision of certain nutritional, diagnosic, health, and testing services to parochial school children, even when provided on the premises of parochial schools.

In a second section, the CRS opinion purports to list, based on the Supreme Court rulings discussed in its first section, the kinds of Chapter 1 services that can be provided on parochial school premises and the kinds of services that can only be provided at "religiously neutral sites off the premises of sectarian schools ...." Included as a "service" are "instructional materials, supplies, and equipment." CRS opinion at 11-12.

Insofar as the discussion and legal conclusions of the CRS opinion are confined to the "direct public subsidy" of Chapter 1 services to parochial schools, we have no reason to disagree with them. Nor, generally, do we disagree with the distinctions it draws between those Chapter 1 services that can constitutionally be provided on the premises of parochial schools and those that cannot. By "direct public subsidy" we mean the provision of federal financial assistance, or goods and services purchased in whole or in part with federal funds, directly to parochial schools.

However, we think the CRS opinion does not give adequate attention to the fact that the Supreme Court has upheld the provision of certain goods and services directly to parochial school children, even where it has refused to allow the provision of these same goods and services through the auspices of the parochial school. Thus, for example, it is misleading to state categorically that, under the Court's precedents, instructional materials "cannot be provided for use in instructional programs offered on the premises of sectarian schools." It is true that the Court has refused to allow the provision of secular instructional materials to parochial schools for use by children enrolled there, Meek v. Pittenger, 421 U.S. 329 (1976); however, it has upheld the provision of such materials directly to parochial school children. Board of Education v. Allen, 392 U.S. 326 (1968). We think this point bears emphasizing in the CRS opinion, particularly in light of its recognition that "[w]hat can constitute Chapter 1 services ... depends in large measure on the resourcefulness of LEAs in devising programs and projects appropriate to their circumstances." CRS opinion at 9. There appears to us no reason why, under existing law, LEAs might not develop programs whereby Chapter 1 goods and services could be channeled directly to educationally deprived children enrolled in parochial schools.

The point bears emphasis for another reason: legislation has recently been introduced in both the House and Senate that would authorize LEAs to issue "educational vouchers" to parents of

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children enrolled in private schools, or in public schools outside their home school attendance area, to defray the cost (including tuition) of obtaining Chapter 1 services in such schools. See H.R. 3821 and S. 1876. In effect, this legislation would authorize the use of federal funds by parents of eligible children to obtain for their children all of the Chapter 1 services listed on pages 11 and 12 of the CRS opinion, on either the premises of a private or public school. We believe that this approach to funding the provision of Chapter 1 services by parochial schools - which makes federal funds available to such schools "as a result of numerous, private choices"[1] - is both constitutionally sound and educationally wise, since it enhances the achievement of educationally deprived children by expanding opportunities for their parents to choose schools that best meet their needs. Once this legislation has been passed, the opportunity of an educationally deprived child to obtain Chapter 1 services will no longer be dependent upon the parents' choice of which school he or she will attend. In short, with such legislation it will be possible to avoid the awkward and often artificial distinctions which plague this area of the law, and most importantly, to achieve the Act's goal of providing compensatory services to all educationally deprived children.

Sincerely,

John R. Bolton
Assistant Attorney General

[1] Mueller v. Allen, 463 U.S. 388, 399 (1983).

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UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

JAN 31 1986

Honorable Augustus F. Hawkins
Chairman
Committee on Education and Labor
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your January 13, 1986 request for my comments on an opinion written by the American Law Division of the Congressional Research Service (CRS). This opinion concerns the scope of permissible services under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1) for children attending religiously-affiliated private schools in light of the Supreme Court's decision in Aguilar v. Felton. In that decision, the Supreme Court ruled that Chapter 1 instructional services cannot be provided within religiously-affiliated private schools.

I appreciate the opportunity to comment on this opinion. I also have enclosed a copy of the Department's Guidance on the Felton decision. I believe that this Guidance has been useful to State and local educational agencies administering Chapter 1 programs, and I would suggest that this letter and the Department's Guidance be published along with the CRS opinion.

I believe that the CRS opinion accurately summarizes the Supreme Court's decisions in Aguilar v. Felton and its companion case, School District of Grand Rapids v. Ball. As the Supreme Court has recognized, however, the implications of one decision under the Establishment Clause are not always clear for other cases presenting different facts and circumstances. For that reason, I have cautioned State and local officials against extending the Felton decision beyond the circumstances clearly addressed by that case. In light of the unsettled state of the law in this area, it would be presumptuous to interpret the Felton decision as prohibiting on-premises services to private school children in all other Federal programs, or as prohibiting funds under Chapter 2 of the Education Consolidation and Improvement Act of 1981 from

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being used for equipment and supplies placed on private school premises. It therefore warrants emphasis that, in attempting to describe the implications of Aguilar v. Felton, the CRS opinion deals with Chapter 1 and only Chapter 1.

With regard to the discussion of Chapter 1, there are a few instances where the Department's guidance may vary somewhat in emphasis or detail from the CRS opinion. Specifically -

(1) The CRS opinion correctly indicates that Chapter 1 instructional services cannot be provided within religiously-affiliated private schools. The opinion also notes that certain noninstructional services can be provided within these schools. In this regard, the Department has indicated in its Guidance that the Supreme Court has distinguished the role of a diagnostician from that of a teacher or counselor; hence, the Department has taken the position that on-premises testing for the purpose of selecting Chapter 1 students is not prohibited by Felton.

(2) The CRS opinion also states that "[w]ith the possible exception of textbooks, [instructional materials, supplies and equipment] cannot be provided for use in instructional programs offered on the premises of sectarian schools." The Department's Guidance (at page 7) indicates, however, that a private school child may take into the private school Chapter 1 instructional materials for his or her own use as part of the child's Chapter 1 program.

(3) In determining that Chapter 1 services must be provided at religiously neutral sites such as public schools, leased facilities, or mobile vans, we were pleased to see that the CRS opinion does not attempt specifically to define a religiously neutral site or to provide an exhaustive catalogue of the spectrum of arrangements that may qualify as neutral sites. Because school districts often face complicated and varying factual situations as they struggle to implement the Felton decision, we believe that technical assistance on a case-by-case basis may be more helpful to them than broad generalization. The Department stands ready to provide such assistance.

(4) The CRS opinion correctly points out that there are no Supreme Court decisions directly dealing with certain methods of delivering Chapter 1 services to private school children (radio or television, computers, and telephones). The constitutionality of these types of services may differ depending on the particular facts and circumstances of each situation.

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Page 3 - Honorable Augustus F. Hawkins

(5) Finally, I suggest that the CRS opinion be read in conjunction with CRS' helpful analysis of our current voucher legislation.

In previous communications with State and local officials, I have emphasized that the Supreme Court's decision in Felton did not strike down the statutory requirement that Chapter 1 services must be provided on an equitable basis to eligible children attending private schools. Although the Supreme Court's decision makes the provision of equitable services for these children significantly more difficult, State and local educational agencies must continue to adhere to this statutory requirement.

I hope that these comments are useful in clarifying the scope of permissible Chapter 1 services for children attending religiously-affiliated private schools. If I can be of further assistance, please let me know.

Sincerely,

William J. Bennett

Enclosure

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UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON D C 20202

GUIDANCE

ON

AGUILAR v. FELTON

AND

CHAPTER 1 OF THE

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT (ECIA)

QUESTIONS AND ANSWERS

August 1985

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1. Question: May Chapter 1 instructional services be provided to private school students on the premises of religiously-affiliated private schools?

   Answer: No. In Aguilar v. Felton, the Supreme Court held that Chapter 1 instructional services may not be provided on the premises of religiously-affiliated private schools. Instructional services for those children must be provided at sites that are neither "physically nor educationally identified with the functions of the private school." See Wolman v. Walter, 433 U.S. 229, 246-47 (1977).

2. Question: Are Chapter 1 programs on nonreligious private school premises affected by the Aguilar v. Felton decision?

   Answer: No.

3. Question: Does the term "teacher" as used in Aguilar v. Felton include other public school personnel?

   Answer: The second circuit opinion affirmed by the Supreme Court in Aguilar v. Felton forbade "the use of federal funds to send public school teachers and other professionals into religious schools to carry on instruction, remedial or otherwise, or to provide clinical and guidance services." However, the Supreme Court in an earlier case, Wolman v. Walter, distinguished the role of the diagnostician from that of the teacher or counselor with regard to services in the private school. We view testing to select children as part of diagnosis; hence, on-premises testing for student selection is not prohibited under Aguilar.

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4. Question: If a local educational agency's (LEA) application does not provide for equitable services to private school children, may a State educational agency (SEA) approve it?

   Answer: No. Furthermore, the LEA has no authority to expend funds until the SEA approves the application.

5. Question: How are services to private school children to be monitored by the LEA and SEA?

   Answer: The LEA and the SEA must monitor services for private school students in the same way they monitor services to public school children. In addition, the SEA must ensure that equitable services are provided to private school students.

6. Question: Can private school students receive services in public schools or at neutral sites during regular school hours? Before or after school or on weekends?

   Answer: Yes. These options are all available, but the services must be equitable to services provided public school children.

7. Question: Can private school children receive Chapter 1 services in the private school before or after regular school hours or on weekends?

   Answer: No.

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8. Question: Can private school children receive services with public school children in a summer school program?

Answer: Yes, but services must be equitable to those provided public school children. To provide only summer activity for private school children, while serving public school children during both the regular term and summer, would not be equitable.

9. Question: Where may summer school services be provided?

Answer: At any site allowable during the regular school year.

10. Question: Has the LEA and SEA responsibility for providing services on an equitable basis to eligible private school children been changed?

Answer: No, it was not changed by the Court's decision.

11. Question: Who is responsible for planning and implementing the Chapter 1 program for private school children?

Answer: An LEA must plan to provide Chapter 1 services to private school children "in consultation with private school officials." However, the decision as to what to propose in its application rests with the LEA and the decision as to what to approve rests with the SEA.

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12. Question: What criteria should an LEA and SEA consider to determine equitability?

Answer: First of all, the public and private school children must be considered as participating in the same project, not different projects--for which those children, all at certain grade levels, are selected on the basis of similar measures of educational need. The "equity" of services for private school children can be assessed only by comparing those services to those provided for public school children. The services may be considered equitable if--

a. The LEA assesses, addresses, and evaluates the private school children's specific needs and their educational progress on the same basis as public school children.

b. The LEA provides, in the aggregate, about the same amount of instructional time and materials for each private school child as compared with each public school child.

c. The instructional services cost about the same. Section 557(a) of Chapter 1 of ECIA requires "equal" expenditures for private and public school students. Thus, the cost per eligible child must be considered in determining equitability. However, cost is not the sole means of determining equitability.

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d. The private school child has an opportunity to participate equitable to the opportunity of a public school child. In one school district the opportunity may be at another site during the school day. In another, it may be outside of regular school hours. Any alternative must be evaluated in the light of local conditions. Other factors should be considered, including the level of educational service, the age of the children to be served, the time lost in travel, availability of transportation, distance, weather, supervision, safety, and the opportunity for and the rate of participation.

13. Question: May an LEA revise its program for public school students so that it is equitable with that for private school students?

Answer: Yes. In some cases it may be necessary to adjust the manner in which services are provided to public school students.

14. Question: May Chapter 1 pay for the rental of facilities, the cost of arranging for such space, the costs of transporting private school pupils, or the costs of transporting private school pupils from home to the Chapter 1 services?

Answer: All of the above are allowable Chapter 1 costs.

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15. Question: If providing off-premises services requires additional costs, such as those for transportation, space, or administration, do they come from the LEA's whole Chapter 1 allocation or from that part of the LEA's Chapter 1 allocation which would normally go to serve private school students?

Answer: These additional costs would come from the LEA's whole allocation, so that Chapter 1 instructional services may be provided on an equitable basis to both public and private school children.

16. Question: Where an LEA provides Chapter 1 services to nonpublic school children in the public schools, may the LEA charge Chapter 1 a reasonable amount for the space used? How are such costs allocated?

Answer: Yes. Reasonable and necessary costs for public school space for the instruction of nonpublic school students are allowable. Reasonable and necessary costs are those in excess of what the LEA would incur in the absence of Chapter 1. For example, the cost of a classroom in a building already in use would not be an excess cost. Special costs incurred in preparing and maintaining it for occupancy by Chapter 1 would be allowable.

Any such costs would be considered administrative and would come from the LEA's whole Chapter 1 allocation—not the portion which is for instructional services to private school children.

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17. Question: May a private school child take onto private school premises Chapter 1 instructional materials for his or her use as part of the child's Chapter 1 program?

Answer: Yes.

18. Question: Can a neutral third-party contractor provide instructional services on the premises of a religiously-affiliated private school?

Answer: No.

19. Question: On what basis can a bypass be requested?

Answer: Section 557(b) of the Chapter 1 statute and Section 200.80 of the regulations state that if an LEA is prohibited by law from providing or the Secretary determines that the LEA has substantially failed to provide Chapter 1 services to private school children, he can waive the requirement of the LEA and, instead, arrange for the provision of such services. A representative of a private school child can register a complaint with the Department that an LEA has substantially failed to provide Chapter 1 services; an LEA or SEA can voluntarily notify the Department that the LEA is prohibited from or unable to provide such services; or the Department through its monitoring function can determine that an LEA failed to provide services.

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20. Question: If private school officials consider the Chapter 1 program offered by the LEA to be inequitable, what can they do?

Answer: They may complain to the LEA. If no satisfactory action is taken, they may complain to the SEA. If still no satisfactory action is taken, they may complain to the Secretary. If appropriate, the Secretary takes the steps necessary to invoke a bypass.

21. Question: What are the steps leading to a Chapter 1 bypass?

Answer: After a complaint is received by the Secretary and an investigation finds that an LEA has substantially failed to provide services on an equitable basis to private school children, the Secretary informs the LEA and SEA that a bypass will be invoked. The number of subsequent steps and amount of time necessary to provide services with a bypass varies according to the extent to which an LEA or SEA wishes to appeal. The specific steps are to be found in Section 557(b) of Chapter 1 and in Sections 200.80-85 of the regulations.

22. Question: Where do funds for a bypass come from?

Answer: Funds are deducted from the allocation of the LEA. In computing the amount to be deducted, administrative costs, for both the public and private school programs, are calculated and deducted from the allocation. Remaining funds are allocated for public and private school children to ensure that educational services are equitable. Any increased administrative costs attributable to the bypass, therefore, are shared by both the public and private school children. The Department will ensure that services are provided in the most cost effective manner.

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23. Question: Did Aguilar v. Felton specifically forbid instructional services provided to children in neglected or delinquent institutions operated by religious groups?

Answer: No. The Court did not address the unique circumstances involved in serving children in neglected or delinquent institutions.

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Congressional Research Service
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Washington, D.C. 20540

January 29, 1986

TO : House Subcommittee on Elementary, Secondary, and Vocational Education
Attention: Nancy Kober

FROM : Wayne Riddle
Specialist in Education
Education and Public Welfare Division

SUBJECT : Generally Permissable Uses Of Federal Assistance Under The Basic Grant Program Of Chapter 1, Education Consolidation And Improvement Act (ECIA)

In response to your request of January 22, 1986, we have prepared a brief and not necessarily exhaustive listing of types of educational and related activities that generally are authorized uses of funds received by local educational agencies (LEAs) under ECIA chapter 1. In preparing this list, no account was taken of the particular legal/Constitutional constraints that are or may be placed on chapter 1 services provided to private school pupils, especially those attending sectarian schools. Thus, some of the activities listed below may be authorized for public school pupils but not for the provision of services to private, sectarian school pupils. The activities are listed by the source of the information--either the program legislation and related program administration documents, or program studies/evaluations. Please note that in certain States or LEAs, State/local regulations or policies may further restrict the authorized uses of chapter 1 funds.

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This list is provided in order to elaborate upon the general categories of chapter 1 services outlined in the CRS paper, "Constitutional Guidelines For The Provision Of Services Under Chapter 1 Of The ECIA To Eligible Children Who Attend Private Sectarian Schools," by David Ackerman (Jan. 7, 1986). These general categories are repeated at the beginning of the list below, as Part I. This is followed by the more detailed list of chapter 1 activities mentioned in program legislation, regulations, or evaluations as Part II. After each of the activities is listed the numbers corresponding to general categories in the first list under which the specific activities may fall. For example, if category number 3 in the first list is "health services," then the specific activity of "medical/dental services" in the second list will be followed by a "(3)." Since both the general categories and the specific activities are not mutually exclusive, several categories will be related to multiple activities, and even some activities to multiple categories.

It must be emphasized that the listing of general categories of chapter 1 services is as detailed as allowed or appropriate given the range and specificity of court precedents. The more detailed activities listing below is only a "cross-walk" between those categories and the variety of chapter 1 activities identified in the source documents. Because the courts have not considered cases based upon these detailed activities, there can be no implication that these specific activities are or are not allowed under Constitutional guidelines. Also note that the selection of categories that correspond to specific activities is inherently somewhat arbitrary, especially given the vagueness of some of the terminology.

This listing of activities (part II) is limited to concrete types of services, or "end products," that have been specifically mentioned in the source documents. Since neither ECIA chapter 1 nor its predecessor program,

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Elementary and Secondary Education Act (ESEA) title I, were prescriptive in terms of the substance, curriculum, or instructional approaches of their LEA programs, legislation and regulations provide relatively few details regarding specific activities for which funds could be used. Evaluations or studies of actual activities undertaken by LEAs using chapter 1/title I funds are much more helpful in this regard. Not listed are more general statements regarding the authorized uses of funds or general limitations on fund use (e.g., selection of target school attendance areas, eligible pupils, limitations to excess costs of serving educationally disadvantaged pupils, etc.) that do not describe specific, concrete objects of expenditure.

It has been attempted to make this list of activities (part II) as discrete and detailed as possible within the limitations of the information provided by the source documents. In some cases, the terms used to describe activities or services may be somewhat vague; in these, as in all, cases the terminology used is that found in the source document.

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PART I: GENERAL CATEGORIES OF CHAPTER 1 SERVICES AS IDENTIFIED IN THE PAPER BY DAVID ACKERMAN 1/

1. Diagnostic testing for chapter 1 eligibility purposes

2. Health services (physician, nursing, dental, optometric)

3. Nutrition services

4. Diagnostic speech and hearing services

5. Therapeutic speech and hearing services

6. Guidance, counseling, and therapeutic psychological services

7. Instructional materials, supplies, and equipment (including books, workbooks, projectors, tape recorders, science kits, etc.)

8. Remedial and enrichment instruction

   a. by teachers and aides otherwise employed by sectarian schools

   b. by public teachers and aides

   c. via radio or television

   d. via computer

   e. via telephone

9. Transportation of eligible children to chapter 1 sites

10. Construction and renovation of facilities used for chapter 1 services

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1/ U.S. Library of Congress. Congressional Research Service. Constitutional Guidelines For The Provision Of Services Under Chapter 1 Of The ECIA To Eligible Children Who Attend Private Sectarian Schools. Typed report, by David M. Ackerman, Jan. 7, 1986. Washington, 1986.

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PART II: SPECIFIC, DETAILED CHAPTER 1 ACTIVITIES EXPLICITLY IDENTIFIED IN LEGISLATION, REGULATIONS, OR EVALUATIONS

A. Activities Expressly Authorized in ECIA Chapters 1 and 3 (Authorizing Legislation)

(Sec. 555(c))

1. Payment of the regular salaries of teachers and teacher aides (8a, 8b)

2. Acquisition of instructional equipment (7, 8c, 8d, 8e) 2/

3. Acquisition of instructional materials (7, 8c, 8d, 8e)

4. Payment of the salaries of guidance and counseling personnel (6)

5. Payment of salary bonuses to teachers (8a, 8b)

6. Training of teachers and teacher aides (8a, 8b)

2/ In ECIA chapter 3, sec. 595(9), "equipment" is defined as including "machinery, utilities, and building equipment and any necessary enclosure or structure to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials." Federal regulations for chapter 1 (34 CFR 200.74) state that in the case of equipment and supplies provided for services to private school pupils, a public agency "must keep title to and exercise continuing administrative control of all" such equipment and supplies, and that they can "be removed from the private school without remodeling the private school facility."

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7. Construction 3/ of school facilities 4/ "where necessary" (10)

8. Program planning (na) 5/

9. Program evaluation (na)

10. "[O]ther expenditures authorized under title I of the Elementary and Secondary Education Act [ESEA] as in effect September 30, 1982" (See section B, below)

(Sec. 556(d)(9))

11. "[A] project designed to upgrade the entire educational program in [that] school" if at least 75 percent of the enrolled pupils are from low-income families 6/ (1-10)

(Sec. 557)

12. Educational radio and television (7, 8c)

13. Dual enrollment (1-9)

14. Mobile educational services (1-8)

15. Mobile educational equipment (7)

16. Administrative and other costs of providing services to pupils attending private schools via third-party organizations (by-pass arrangements) (na)

3/ In ECIA chapter 3, sec. 595(a)(8), "construction" is defined as including "the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities." Federal regulations for chapter 1 (34 CFR 200.75) state that no "funds may be used for repairs, minor remodelling, or construction of private school facilities."

4/ In ECIA chapter 3, sec. 595(a)(10), "school facilities" are defined as including "classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public." Federal regulations for chapter 1 (34 CFR 200.75) state that no "funds may be used for repairs, minor remodelling, or construction of private school facilities."

5/ There is no category in the initial listing that corresponds to this activity.

6/ See sec. 133(4) of ESEA title I, except paragraph 4.

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B. Activities Not Listed Above, Which Are Expressly Authorized Under Title I, ESEA, As In Effect On September 30, 1982
(see item 10 above)

(Sec. 124(f)(2))

17. Health, social, or nutrition services (2, 3, 4, 5, 6) (Sec. 134)

18. Non-instructional duties for teachers and other personnel whose salaries are paid by chapter 1 funds (na)

C. Activities Not Listed Above, Which Are Specifically Mentioned In Chapter 1 Program Regulations
(34 CFR Parts 200 and 204)

"None"

D. Activities Not Listed Above, Which Are Specifically Mentioned In Chapter 1 "Nonregulatory Guidance," Released by the Department of Education in June 1983

19. Under "allowable costs" (p. 13-14), it is stated that while the regulations in 34 CFR Part 74 (Administration of Grants) are not applicable to ECIA programs, they may be used as "guidance" as what costs are allowable. The regulations in 34 CFR Part 74 offer detailed guidance primarily with respect to the calculation of indirect, or overhead, costs that grantees may charge against Federal assistance programs. All of these indirect costs may be considered to be included in the category of administrative expenses. (na)

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E. Activities Not Listed Above, Which Are Specifically Mentioned in Secretary of Education Bennett's August 15, 1985 Letter to State Education Agencies (SEAs) Regarding Implementation of the July 1, 1985 U.S. Supreme Court Decision in the Case of Aguilar v. Felton

20. Services on religiously-affiliated private school premises (1-8)

21. Services on the premises of non-religious private schools (1-8)

22. Pupil testing and diagnosis (1)

23. Services on neutral sites (i.e., neither public school nor religiously-affiliated private school premises) (1-8)

24. Services after regular school hours (1-8)

25. Services on weekends (1-8)

26. Summer school programs (1-8)

27. Rental of facilities (1-8)

28. Pupil transportation (9)

F. Activities Not Listed Above, Which Were Mentioned In Program Evaluations As Activities Actually Conducted By LEAs With Funds Received Under ESEA Title I Or ECIA Chapter 1.

The reports used were "Compensatory Education Services" by the National Institute of Education (NIE), July 31, 1977, "A Study Of Compensatory And Elementary Education: The Sustaining Effects Study" (SES) by the System Development Corp., January 1983, "Local Operation of title I, ESEA 1976-1982: A Resource Book" by Advanced Technology, Inc. as part of the District Practices Study (DPS), June 1983, and "The Use Of Computers In Instruction Supported Under Chapter 1 Of The Education Consolidation And Improvement Act" by Elizabeth R. Reisner of Policy Studies Associates, Inc. (PSA), September 1983. The first of these studies (taken chronologically) in which an educational activity is mentioned is indicated below. Please note that some of these

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activities may not be permissable under chapter 1; they are listed here to provide information on program activities from such evaluations, and because of the general lack of such evaluations thus far for chapter 1. Further, continuity between the services provided under ECIA chapter 1 and ESEA title I may be assumed in most cases, as has been reported in a recent study, "State And Local Response To Chapter 1 Of The Education Consolidation And Improvement ..t, 1981," by Milbrey W. McLaughlin, et al.

29. Remedial reading (NIE) (7, 8a-e)

30. Mathematics (NIE) (7, 8a-e)

31. Preschool/Kindergarten readiness activities (NIE) (1-10)

32. Language arts/communication skills (NIE) (7, 8a-e)

33. English as a second language (NIE) (7, 8a-e)

34. "General enrichment" (NIE) (7, 8a-e)

35. Special education/learning disabilities (NIE) (2, 4, 5, 6, 7, 8a-e)

36. Music or art (NIE) (7, 8a-e)

37. Special instructional programs for dropouts (NIE) (6, 7, 8a-e)

38. Social/cultural studies (NIE) (7, 8a-e)

39. Health/nutrition (NIE) (2, 3)

40. Science (NIE) (7, 8a-e)

41. Industrial arts/home economics (NIE) (7, 8a-e)

42. Salaries of instructional specialists (e.g., special reading teachers) (NIE) (4, 5, 8a, 8b)

43. Activities in pupils' regular classrooms (NIE) (1, 4, 5, 6, 7, 8a-e)

44. Activities in pull-out settings (NIE) (1, 2, 3, 4, 5, 6, 7, 8a-e, 9)

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CRS-10

45. Auxiliary services:

--Resource centers (NIE) (7, 8d)

--Libraries (NIE) (7, 8d)

--Medical/dental services (NIE) (2)

--Psychiatric and diagnostic services (NIE) (2, 6)

--Transportation (NIE) (9)

--Food (NIE) (3)

--Speech and hearing therapy (NIE) (5)

--"Social work" (NIE) (na)

--Counseling (NIE) (6)

--"Community services" (NIE) (na)

--"Student body activities" (NIE) (na)

--Clothing (NIE) (na)

--"Attendance services" (NIE) (na)

46. Parental involvement activities (SES) (na)

47. Salaries and equipment for LEA chapter 1 coordinator and other administrative staff (DPS) (na)

48. Personnel benefits other than salaries (DPS) (1, 2, 3, 4, 5, 6, 8a, 8b, 9)

49. Vocational education (DPS) (7, 8a-e)

50. Microcomputer hardware (PSA) (7, 8d)

51. Microcomputer instructional software (PSA) (7, 8d)

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G. Additional Activities Mentioned In A Recent Article 1/ As Being Conducted In Wisconsin Chapter 1 Programs To Provide Services To Private School Pupils Without Violating A State Attorney General Decision Similar To The Supreme Court's Aguilar Decision.

52. Instruction via telephone (7, 8b, 8c)

53. Instruction via closed circuit television (7, 8b, 8c)

H. Additional, Relatively New Forms Of Educational Technology Through Which Chapter 1 Services Might Be Provided, Now Or In The Near Future, But The Use Of Which In Chapter 1 Has Not Been Documented.

54. Transmission of information or instructional software between computers via telephone lines (7, 8d, 8e)

55. Instruction via videocassette tape recordings (7, 8c)

56. Compact laser disk-based computer hardware and software for information retrieval or "interactive" instruction (7, 8d)

We hope that you find this information to be of assistance.

1/ A Decade Of Experimentation: How Wisconsin Serves Parochial Children Without Teacher Assignment. Education Times. July 15, 1985. p. 1-2.

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PART 2: CASE STUDIES IN COMPLIANCE

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CASE STUDIES OF COMPLIANCE WITH THE FELTON DECISION

I. INTRODUCTION

In January and February of this year, the Subcommittee staff conducted a telephone survey of local educational agency and private school officials around the country. Through this survey, we sought to locate districts that had worked out satisfactory arrangements to serve nonpublic school children under Chapter 1 in compliance with the Aguilar v. Felton decision. We found several such school districts, in diverse settings, where it appeared nonpublic school children were being adequately served under Chapter 1 through a variety of interesting arrangements. This report shares some examples of our findings, which might be of particular benefit to those local educational agencies where the means for serving private schools are still unsettled.

It is important to keep in mind that school districts faced a difficult situation when the Felton decision was announced in July. With few exceptions, LEAs had to comply at once, for the school year that was to begin in a few weeks. The descriptions that follow are not intended to suggest that these are the only acceptable practices or necessarily the best for a particular situation. There are many other possible solutions that we were not able to cover in the time available for our telephone survey. Also, we have not commented on the constitutionality or legality of any particular means described below, because only a court can ultimately decide those issues. However, we are highlighting those agencies where school officials have made good faith efforts to deal with trying circumstances. We have not included the names of the school districts to ensure the confidentiality of our respondents.

II. CASE STUDIES

A. Large school districts (over 25,000 total enrollment)

1. North Central

For the past several years, a large urban district in the North Central region has served nonpublic schoolchildren with computers, telephones, and summer camps, because the State constitution prohibits services on religious school premises. This LEA serves 900 parochial school students in 9 elementary and 4 high schools through an arrangement that has developed into an effective means of improving student achievement.

The vast majority of the nonpublic students are served through the computer-assisted instructional program. The LEA has contracted with an educational curriculum corporation to provide the curriculum and technical staff. The equipment was purchased by the LEA.

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Although the upfront expense was higher, the program has been operated at an average cost of $125 per pupil per year. Terminals are placed in labs in the private schools and are hooked up to a central computer in the public schools. The programs are stored in the mainframe computer.

Most schools have 4 to 8 terminals and can serve about 10 students per terminal. Chapter 1 students receive 10 minute units of supplemental, individualized drill and practice in reading, language arts, and/or math. Students complete two units during each daily session. According to one high school principal, the students attend the lab during study time, so they do not miss class time. Volunteers in the private schools -- librarians, retired clergy, paraprofessionals, or teachers -- generally monitor the sessions. Parochial school staff receive training from the corporation.

Public school teachers monitor the students' progress, make sure the program complies with Chapter 1 guidelines in such areas as student eligibility, and visit the sites on a regular basis. The public school supervisors can also monitor the activity from the mainframe computers located in public school facilities. The parochial school classroom teachers receive progress reports on the Chapter 1 students.

Private school personnel expressed satisfaction with the arrangement. One principal called it an "excellent program" and reported that her students are achieving good results on post-testing and are more enthusiastic than before. This principal observed that the computers have made Chapter 1 more "prestigious", to the point that other students envy the Chapter 1 students. The public school coordinator felt that the computerized program has made it easier to fit Chapter 1 into the regular school schedule. The coordinator also noted that the project is very cost effective, yielding better results than projects that cost many times more per pupil. The public schools are now using computerized instruction in 35 public school buildings.

The LEA also offers two other Chapter 1 programs to nonpublic schools. The first is a telephone network located in smaller schools that are not in the computer program. Three days a week the students receive their lessons from a teacher by telephone, using the curriculum packets provided by the Chapter 1 teacher. Four locations with 50 students are served in this way. The LEA also runs a special summer "day camp" for about 300 parochial students. Priority is given to those who are not in Chapter 1 during the regular school year, especially those who attend schools with only 3 or 4

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eligible children. Children learn reading and math through nature and other special studies.

2. Par West

An urban district in a Pacific state has put together a combination of neutral sites, public school classrooms, and computers to serve four nonpublic schools (one fewer than last year). The nonpublic school program became operational at the beginning of the second semester in January.

Students from one school are walking to a public school one and one-half blocks away. A part-time teacher serves the nonpublic students at this site. The private school personnel walk the children partway and are met by the public school staff, who walk them the rest of the way.

Students from a second school are receiving Chapter 1 services in a house across the street in which the LEA is renting a bedroom for $180 per month plus insurance. The principal chose the site, whose owner was known to her. A teacher and an aide work two and one-half days a week at this site with groups of about eight children. According to the principal, it takes about a minute for the children to walk across a rather quiet street. A group of older children and a group of younger children go over together, so the older ones can help the younger ones across the street. Even so, the program has lost 10 children whose parents do not want them to cross the street. Once the program has been operating longer, the principal intends to contact these parents to encourage them to allow the children to participate.

Although the room met all codes, the private school personnel painted it and put a separate lock on it. Furniture was provided by the school district. The LEA has assumed responsibility for anything stolen from the room. The principal said she is "real happy with our situation."

The remaining two schools have a computerized instructional program, in which the LEA controls the curriculum, tests students, and monitors the program's operation. The system involves "dumb" terminals which are connected to the mainframe over telephone lines and cannot be programmed by the private schools. Some telephone and electrical work was necessary to install the computers. The LEA is contracting with a private company for the software.

The private school computer labs are supervised by

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private school volunteers. The public school computer center to which the terminals are connected is supervised by a teacher and an aide, an increase of 30% in the full-time equivalent certified staff serving the two schools last year.

According to the local coordinator, the computer equipment and software is expected to cost $65,000 over two years. In addition, the LEA is paying the salaries of the teacher and aide at the computer center. Altogether, the program will cost less than the $66,700 spent for staff for those schools last year. However, there are fewer eligible children in the program this year because test scores in one school went up. The LEA also saved through the donated time of public and private school personnel doing the necessary electrical work in their respective buildings.

The coordinator stated that since the program has been operational, he has received positive feedback from the private schools. He attributes the success of the arrangements to the "fine working relationship" the district has had with the nonpublic schools. A nonpublic school principal concurred that the LEA had been very cooperative in trying to meet the needs of her school, although she felt the State department of education had not been cooperative.

3. Midwest

A midwestern urban district with an enrollment of over 50,000 is using mobile vans to serve the 5 private schools that participated in Chapter 1 last year. Because a State-funded program of auxiliary services for private schoolchildren has been conducted off the private school premises, the vans were already available and service poles for them were already in place. As the local Chapter 1 coordinator asserted, "Since we've been doing this with State funds for ten years, we knew exactly what to do." The program for private school children has been in place since near the beginning of the school year, with a week or two lost in transferring the materials and setting up the van.

The vans are driven by the teachers and parked curbside at the private schools. In those situations where the van is parked across a street, the Chapter 1 teacher walks the students across the street. Public and private school officials report some loss of time in bundling the students up for the harsh weather in this northern climate. Each van has a telephone hookup and electricity.

Once inside the vans, students at one school, for

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example, receive a 40 minute period of Chapter 1 services that are similar to the services received on premises last year. In one situation, to cite an example, the students receive reading in small groups of 5 or 6, and the van stays by the school for a full 6 periods a day. The children are pulled out of that portion of their regular reading class when they would be working at their desks while the teacher works with another group, so they do not miss their regular reading lesson. According to a private school principal, the only noticeable difference in services is that the van lacks adequate blackboard space and is too small to use an audiovisual machine.

The number of children receiving services has remained the same as last year. According to the Chapter 1 coordinator, the number of teachers has remained the same also, with each teacher serving about 35 students a day. A private school principal related that the Chapter 1 teacher -- whom she called a "good teacher" -- lunches with the private school teachers, where they can talk about students' progress.

The vans can be parked overnight behind the school, or in situations where that is not desirable, at a central bus compound owned by the school district. Severe winter weather has caused a few problems with starting up and heating some vans.

Private and public school officials began meeting in August and arrived at the van arrangement before school began. The Chapter 1 coordinator reported that there has been no significant extra expense because the district already owned 33 vans, and the Chapter 1 private schools were already receiving State services in vans. If the district had had to purchase vans, they estimated the cost at $40,000 per vehicle. In the event another school that has not received Chapter 1 in the past decides to come into the program, the district will have to purchase an additional van.

One principal wistfully remarked that "it was simpler when we had a room in the school" but concluded the van was better than not having Chapter 1 services. From the reports we received, this district's program seems to be operating smoothly.

4. South Central

An urban district of over 40,000 had had experience with off-premise Chapter 1 services to nonpublic schools in the late 1970's, pursuant to State policy. One school received services in the building after the State policy changed in 1981, although the others continued with mobile labs. Consequently, the

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Felton decision did not cause as much disruption in this district, which already owned the vans.

This year, the LEA has been serving 3 nonpublic schools with mobile vans since the beginning of the year. One teacher in a van serves two schools; the third has its own teacher and van. One teacher drives, and the other is provided with a driver by the LEA. The vans park on the street as near as possible to the school door, which has resulted in a few complaints from the neighbors in this residential area. (Prior to Felton, they parked on the private school grounds.) Escorts are paid for by the LEA. Each van/lab contains a computer with a printer and can seat 8 children at one time. After school, the vans are driven back to the public school service center.

The biggest problem has been in maintaining the aging vans. One van developed problems with its exhaust system and was out of commission for about a month. In the past, when the vans were being serviced, the teachers came into the buildings, but this year the children lost services. With the vans no longer parking on the grounds, new cables and electrical hookups had to be installed, and this caused some problems. Since these problems have been fixed, the program has been working "fine" according to public and private school officials.

Though satisfactory, the arrangements have entailed additional costs. In school year 1983-84, the nonpublic school program cost $36,000 for 40 students. This school year, it has cost $52,000 just through December to serve 74 students. The Chapter 1 coordinator estimates that this figure may double by the end of the year. There have been additional expenses for gasoline, maintenance, insurance, and a driver. The coordinator is uncertain how the LEA will absorb these costs next year, because they have little carryover money. In fact, the coordinator reported, the LEA eliminated 8 aides for the entire Chapter 1 program this year, due to budgetary problems.

5. Southwest

A large, urban district in a Southwestern state is providing computer-assisted instruction to its private schoolchildren. Like many districts, this educational agency has contracted with a computer corporation to provide hardware, software, staff training, and maintenance at an agreed-upon price. The company was selected because of its experience with computerized instruction and its special courseware for disadvantaged children. Last year, the district had conducted a similar program with local funds in a public Chapter 1

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school and had achieved good results.

One private school with approximately 50 Chapter 1 children is receiving computerized instructional services. Last year two other schools shared a teacher, but because the number of eligible children had fallen to six or less in each school, these schools dropped out of the program this year. The Chapter 1 coordinator stated that even without Felton, these schools would not have been eligible for a program of sufficient size and scope. A private school official stated that the smaller schools felt "it wasn't worth the hassle" to participate.

The private school set up a computer lab in a classroom. Each Chapter 1 child receives instruction via the computer for 45 minute periods, working on his or her identified weaknesses. The students are pulled out of other classes, as decided by the private school. A private school teacher, trained by the corporation, supervises the students and operates the machine. According to the service agreement, the private school teachers do student testing, the results of which are turned over to the public school personnel, who monitor and evaluate the programs. The public school supervisor has made monitoring visits, although the private school officials expressed some uncertainty about how active a role this person can take.

Previously, students in this school had received Chapter 1 instruction 5 times a week. The private school officials decided to reduce this to three times a week because they wanted their children to have "some contact with a live teacher." The principal reported being pleased with the program, which began at the start of the second semester, although he expressed concern that "an electronic unit cannot keep the classroom teacher apprised."

The agreement for computer-assisted instruction was reached after several months of negotiations, during which other options were rejected by one or another party. Busing to a public school site was rejected because of the time loss and bus scheduling problems. Neutral sites had been the first choice of the private school officials, but problems arose finding an affordable site in the downtown business district near the school. One less expensive site was rejected by the public school because a liability agreement could not be worked out with the owners. The private school principal stated that the public school officials felt that the cost of a mobile van was too great to serve a single school, a point of view which the principal said he understood. An agreement for computerized instruction was reached after the principal visited a similar program

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in a public school and after the private school officials became concerned about the students losing a semester of instruction.

The LEA is leasing the equipment for $16,000 a year, a fee which includes staff training and maintenance and is less than the $30,000 salary of the teacher who served the school last year. The private school principal noted that the total cost of the program is actually the same, if you factor in the donated time of the private school staff who are supervising. The public school coordinator said that the district has experienced funding problems in their Chapter 1 program, having cut 20 teachers in the past two years due to State-mandated increases in teacher salaries and the failure of the funds to keep pace with inflation.

6. Mid-Atlantic

A large, county-wide, suburban school district in the Mid-Atlantic region has contracted with a third party to provide services to 3 schools through teachers in mobile classrooms. Training and orientation began in December and instructional services began with the second semester. Participation has remained high, with approximately 90 of the initial group of 114 students participating.

The contractor is providing vans and equipment and hiring the teachers. The 3 vans, 1 per school, have room for up to 8 students and a teacher's desk and are air-conditioned and heated. Two vans are parked on public property adjacent to the schools. In one situation, the van is parked on the street, although the LEA authorities are looking for a better spot. The vans are at most 15 feet away from the school door, so little class time is lost in transit.

The instruction has also changed. Last year, the nonpublic students received services on premises from instructional aides only. This year, they are receiving services from certified teachers and rotating aides. The public school still monitors the program through teacher specialists assigned by the county.

The program is costing $15,000 more than the services to nonpublic schools cost last year, although the coordinator said the cost is "worth it because everyone is happy." According to a private school official, the cost for six months of services is equivalent to the cost for the nonpublic program for the entire year last year. The LEA is making up the difference from local funds. In recent years, this LEA has generally increased its contribution to compensatory

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education because the Federal funds have not kept pace with rising costs, and the LEA preferred not to eliminate schools from the program.

After several months of meetings that began this summer, an agreement was reached to use mobile learning centers. The LEA decided that contracting with a third party would be less expensive than buying vans outright, although if the program works well this year, the LEA may considering purchasing them in the future. A request-for-proposal which specified the terms of the program was circulated, and a one-year contract was entered into with a local company. With the input of the private school principals, the company hired 3 part-time teachers, who, under the terms of the contract, were State-certified. The company did not have to abide by the LEA salary schedule, so it was able to save money in salaries. The contract teachers and aides are still invited to participate in staff training conducted by the LEA. After the program was negotiated, the LEA held a meeting of private school parents to explain the program and secure their approval for their children to participate.

According to the local superintendent, the reaction from the students, parents, and archdiocese has been "extremely positive." The Chapter 1 coordinator said the students enjoy the program and call themselves "camper kids." An official of the archdiocese expressed concern whether the quality of the teaching staff will be the same. He also expressed concern about the four months during which students lost services and said discussions were occurring about how that time could be made up.

7. South

A large, Southern county-wide school district is providing services in mobile vans and trailers through a third-party contract. Five schools with 180 students are being served, the same number of schools and students as last year. The contract went into effect on December 1. Until that point, students were served on premises. A private school principal observed that there was a "smooth transition" to the vans.

The trailers or vans sit on property leased to the vendor from the church. Three of the trailers are stationary. One Winnebago serves two schools with lesser numbers of students and is parked at one of the schools overnight. An individual electric meter had to be installed for this van, so that the private school is not subsidizing electricity. The normal time allowed between classes has been adequate for the children to walk

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outside to the trailers. One principal said the private school teacher walks the children to the door, where they are met by the Chapter 1 teacher.

The local coordinator said that the program was being operated as much the same as possible, using the same schedule as last year. An exception is that one school which was previously served by an aide and a supervisor is now being served by a certified teacher. The company hired the teachers, one of whom had been a public school Chapter 1 teacher. A parochial school principal reported that the teacher at her site coordinates with the faculty as much as possible. The LEA coordinator believes that the teachers and paraprofessionals are of very high quality. The public school teachers who had previously worked on premises were switched to public school sites, where teaching slots had been kept open for them.

When negotiating the contract, the LEA had stipulated that the program would have to cost the same amount per student. The LEA did not put out bids because they knew of only one company. The local coordinator went to see programs operated by this company in another State before deciding.

A private school principal commended the LEA for their cooperation and observed that the services are still "100 percent of the quality they had before." The principal does not believe the children have been adversely affected. The local coordinator reports receiving no complaints from parents.

B. Medium-size school districts (5,000 to 25,000)

1. Midwest

A city school district of 25,000, in which nearly a third of the students attend nonpublic schools, is offering a novel program of "take home" computers for the Chapter 1 students. This program was fully operational by October 1.

Based on a concept that was piloted at a public school last year, the project lends personal computers to students to take home and use with their parents, who are trained to work with their children. The computers plug into a television set. The software encompasses drills in reading and math, up to the eighth grade level. At any given time, half the 240 students in the programs are using the computers at home while the other half work from workbooks. Every four to six weeks, the groups switch off.

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The LEA is contracting with a third party, which was selected because of its positive track record with programs in this and other cities. The company provides the computers and software, trains the parents, teachers, and students, and replaces any equipment that is stolen or broken. Damage and theft have not presented any problems, according to the LEA coordinator; only two units have been lost all year. A private school principal said the equipment was "easy to operate" and praised the contractor's responsiveness.

The 7 Chapter 1 teachers who formerly taught in the nonpublic schools now visit the students at home to help set up the equipment and monitor their work. One principal said his students were "fortunate" to have a "super dedicated" Chapter 1 teacher. The LEA also runs a computer center at a neutral site where the Chapter 1 students and parents can come after school or in the evenings for consultation and assistance.

The program serves 14 elementary and junior high schools. As a result of the LEA's decision to eliminate all Chapter 1 high school projects, public and private, two parochial high schools that participated last year are no longer being served.

According to LEA staff, the only extra costs were to start up the computer center. These expenses will be balanced by the fact that the corporation expects the costs of leasing computers to decline next year.

Public and private school officials expressed satisfaction with the arrangement. An archdiocese official said that the feedback she has been getting is "extremely positive" and thought that the program was encouraging a "family approach" to education. One private school principal had reservations about the absence of a live teacher and the degree to which the program's success depended on the parents' interest. He pointed out that some parents did not even pick up their comoputers and have allowed their children to drop out of the program; as a result, participation in his school is down. However, this principal believed that in those situations where parental involvement was occurring, the students were reaping benefits and that this was the primary advantage of the program. Private school officials commended the public school officials for their cooperation.

The LEA coordinator is pleased with the program and said he is considering using the computer model in the public school Chapter 1 programs because "this is the way of the future". He also cited the advantage of the

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program not taking any time away from the students' regular class instruction. He added that it is in the interest of the LEA to try to accommodate the nonpublic schools, because the district needs the support of nonpublic school parents as well as public school parents when issues like school taxes come up for a vote.

2. Northeast

A medium-sized urban school district with a high concentration of poor children is leasing two neutral sites close to its two Chapter 1 private schools. According to the Chapter 1 coordinator, there has been no drop-off in the number of children participating. Services at the neutral sites began in November, after several weeks had been spent locating sites, negotiating leases, and remodeling. By providing extra Chapter 1 time, the LEA expects to make up the lost instructional time by the end of the year.

One site is an ambulance service garage, where space was rented and remodeled. Twelve children can be served at one time in this room. The other site is an athletic and social club. According to one of the private school principals, the site is a "beautiful room -- the school district went out of its way to make it nice." Each site has the services of one and one-half teachers.

Volunteers from the private schools -- teachers, aides, or parents -- walk the children to the sites. When the volunteers are not available, the Chapter 1 teacher or the private school principal walks them. One principal said that she did not mind working out this arrangement because she felt the public school had been cooperative. She did express some concern, however, about the children having to walk down a block in a dangerous, high-crime neighborhood.

Taking the children to and from the neutral site takes about 10 extra minutes, which comes out of the regular classroom time. According to the principal, one school had to redo its class schedule three times to accommodate the Chapter 1 classes. She also reported that the regular classroom teachers are trying to cooperate and see to it that the children make up the work they miss going to Chapter 1 classes.

Leasing the two buildings, according to the Chapter 1 coordinator, is costing the LEA $10,000 a year. In addition, the repair and remodeling of the facilities cost approximately $5,000. This expense came off the top of the LEA's Chapter 1 allocation of approximately $1 million and eradicated the district's carryover money.

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The coordinator worried about how the district will budget the expense of leasing the sites next year, without carryover funds, and stated that the LEA may have to eliminate its summer program to make ends meet.

Although the private school people miss the days of services on their premises, they seem to be satisfied with the current arrangement. One principal lauded the cooperation she received from the board of education, saying that they "bent over backwards to service us." The private schools also cooperated because they did not want to lose Chapter 1, for which a large number of nonpublic schoolchildren are eligible. "Chapter 1 is the best program the Federal government has ever had," said the principal.

3. New England

A school district of approximately 9,000 located within a major metropolitan area is serving two elementary and two high schools, the same as last year, with a combination of public school and neutral sites. Services were phased in beginning in September, with the last site fully operational as of October 14.

Students from one elementary school are bused half a mile to a public school, a ride estimated to take 3 minutes. A single teacher divides her time between separate classes of public and private schoolchildren. This same teacher served the private school on premises last year, and that is the major reason the private school principal selected the public school site.

Students from a second elementary school are attending Chapter 1 classes in a recreation building owned by the city. The children walk one block to this site. The parochial school staff walk the children to the edge of the schoolyard, where they are met by a Chapter 1 aide or teacher. At both elementary sites, the students receive Chapter 1 services for 50-minute periods 3 times a week, compared with the 30-minute period, 5 times a week schedule of last year.

Students from one high school are walking to a senior citizens' public housing project about 50 yards away from the school, a site selected by the private school principal. The Chapter 1 teacher is responsible for making sure the students arrive and leave by waiting at the door for them. The principal reports it takes the students about 5 minutes to get there; with 3 minutes between classes, they are only losing 2 minutes. The classes are taking place in a small recreation room in the housing project. This program is being operated two days a week. Chapter 1 participation at this school has

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remained the same.

The principal feels this arrangement is working well. He says it has strengthened ties with the senior citizens: the older people like having the young people around, and the school has invited the senior residents to school assemblies. He also believes that the change in locale gives a psychological boost and a feeling of independence to these older students.

Students from the fourth school, a high school, attend classes at the same recreation building as the aforementioned elementary school. These students are walking about 3/10 of a mile to this site and consequently lose more instructional time -- about 10 minutes each day -- than students at the other three school. This time comes mostly from the time alloted for Chapter 1. The revolving high school schedule has made bus transportation difficult to arrange, according to the local coordinator, who said the LEA is thinking about other options for this school next year.

The same number of teachers and aides are serving the nonpublic schools. The number of students has declined slightly, with some of the loss attributable to students "testing out" of the program this year. Some difficulties have emerged in maintaining communication between the Chapter 1 teachers and the private school classroom teachers, although at some sites, the Chapter 1 teachers are scheduling conferences with their private school colleagues. In addition, the LEA is encouraging written communication between teachers.

Neither the senior citizens' home nor the city recreation commission is charging rent for use of its facilities, although the local coordinator expressed concern that the recreation hall may charge the LEA next year. The LEA is paying $25 a day for van transportation to the public school site, a special rate negotiated by piggybacking an existing contract for transportation for special education students. This fee covers the cost of the driver, the insurance, and the van rental. The LEA was able to cover these extra costs when a last-minute change in State teacher retirement policy freed up some funding unexpectedly. Next year, the LEA officials hope to be able to cover the costs in their budget.

Public and private school officials reported good cooperation from their counterparts in negotiating the arrangements. The Chapter 1 coordinator believed that the LEA's willingness to comply with the private schools' wishes about staffing helped in this regard. In addition, the coordinator applauded the parochial school parents for being "supportive".

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C. Small school districts (under 5,000)

1. West

A rural school district of 3,100 students is renting a room in a church-owned building off the campus of the one parochial school it is serving.

Formerly a nunnery, the building is now a meeting hall and was selected by the private school officials as a convenient site for Chapter 1. It is about 50 yards away from the school. The Chapter 1 teacher walks the students across a relatively quiet street, a process which takes less time than walking across the school campus. One part-time teacher serves 20 children in grades 2 through 6, the same number as last year.

The private school principal said that the school "didn't lose a day" of Chapter 1 services and felt the school had been lucky to have the facility nearby. The church is charging the LEA a "token" rent of $100 per year. The private school officials preferred this arrangement to busing children and losing more instructional time.

The public school coordinator stated that the LEA had no problem negotiating the arrangement and felt that the local private school people had been cooperative. He added that an option such as a portable classroom or mobile unit would have been out of the question for this LEA, which receives only about $95,000 in Chapter 1 money.

2. New England

Two neutral sites are serving the private schools in this small town district of about 4,700.

A privately-owned diet center is housing the Chapter 1 program for the parochial school across the street. Rental of this site is costing the LEA $300 per month.

The other school is sending its Chapter 1 children to a dental office, rented jointly by two LEAs with eligible children in the same parochial school at a rate of $175 per LEA per month. Some minor changes had to be made, such as removing a dentist's chair and installing a new lock. The private school principal described the room as somewhat crowded but comfortable.

One teacher and one aide serve each site. The

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aides were newly-hired this year, partly to help the children get ready to go outside and to walk them back and forth. Getting the children dressed and back to school takes about 10 minutes. About 20 children participate at each site.

The LEA began arranging for the neutral sites in September, during which time the Chapter 1 personnel were testing and screening the private school children on premises. The neutral sites were fully operating in October. The only problem singled out by the private school principal was that coordination with classroom teachers was more difficult.

This year, the LEA is covering the costs of leasing the rooms from its Chapter 1 supply budget and from its carryover funds.

3. Northeast

A small school district in an economically depressed area has established computer centers for the Chapter 1 students in three parochial schools. In this community of neighborhood schools and limited busing, public and private school officials felt that this type of program was preferable to one involving transportation.

Three or more times a week, small groups of students work on their reading skills on the computers. For example, one school with 25 Chapter 1 children has a special Chapter 1 computer lab with 7 computers and a printer, plus the equipment needed to hook up the system to a main network serving all 3 schools. At this school, the students work on the computers in small groups of 2 to 8, supervised by the principal and 2 private school teachers. A public school reading specialist goes to the private schools twice weekly to bring new software and diagnose the students' progress.

The LEA offered a computer training course to private school teachers as part of its Chapter 2 computer staff training program. Most of the teachers in Chapter 1 schools had already been trained last year, and the principals participated this year.

The LEA spent $25,000 from carryover funds to equip the computer centers (from a total Chapter 1 grant of $420,000.) The public school personnel helped do the wiring and other necessary installation work. As a result of the switch to computers, one less teacher is needed for the private school program. The LEA absorbed this teacher in the public school program this year and will not replace the next teacher who leaves.

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Services did not get underway until December. Part of the delay was attributable to the school district awaiting guidance from the State regarding a pending lawsuit. In the meantime, the public and private school officials had been meeting frequently to work out an arrangement; after the decision had been made to go ahead with computerized instruction, the purchase and installation took several weeks.

One private school principal declared that the program is "working out well," and that her students are excited to use the computers, to the point that the other children in the school are jealous. The principal said that Chapter 1 attendance in this school has remained the same, which supports the LEA coordinator's figures that participation in general has not declined. In addition, the private school students continue to participate in a Chapter 1 summer program conducted at a public school. Private school parents are still involved in Chapter 1 parent activities.

Public and private school officials agreed their history of cooperation helped in resolving this situation.

4. Northeast

Another small city school district in a State with a large number of private schools is renting two neutral sites to serve 32 children in two Chapter 1 parochial schools. These programs became operational in early October.

One site is a private social club across an alley from the private elementary school. The principal walks the children to the alley; the Chapter 1 teacher, waiting on the other side, signals them to cross. This site was located after a lengthy search, since there were few available buildings in this neighborhood.

The other site is a room in a home for crippled children, where the intermediate educational unit had already been operating a learning disabled class for private school children in the morning. The room was vacant in the afternoon, so, at the suggestion of the private school, the LEA rented it for Chapter 1. This arrangement caused little disruption in schedules because the Chapter 1 teacher was already serving this school in the afternoon. The LEA is paying for a mother "safety aide" to walk the children 3/4 of a block to the home.

At both sites, the children are taught reading by a certified teacher. The number of students

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participating has remained about the same.

In addition, the LEA had already been operating a computerized Chapter 1 math program for children in public and private schools. This program did not change, since the instruction was via computer and the only visits by the public school Chapter 1 staff were for monitoring purposes.

The LEA is paying $2,400 a year for one site and $1,300 for the other, as well as over $3 an hour for the walking aide. This district had enough carryover funds to cover these costs, although some uncertainty was expressed about future budgets.

According to a private school official, the neutral site arrangment was "worked out soon with no problems," and the LEA was very cooperative.

5. South

A small, Southern school district has actually increased participation and instructional time in its Chapter 1 parochial school program. At the suggestion of the one participating private school, classes are being held in a city-owned arts building. Classes started near the beginning of the school year.

The LEA is renting the building for the nominal fee of a $1/year. Special education classes were already being held at the site, so Chapter 1 was scheduled for the afternoon hours when the space was free. The room was already equipped for the other class, so only the materials had to be provided. A retired nun walks the children to the building, where they are met by the Chapter 1 aide. The walk takes about three minutes, although preparing for inclement weather can be a problem. Four groups of students are served in 30-minute blocks.

As in last year's program, an aide instructs the students. However, because of the time during which the room is available, the aide was scheduled for an extra hour this year, so that more students can be served. The extra time facilitated the addition of a Chapter 1 math program and allowed participation to increase from 14 to 25.

The only extra cost to the school district was for the extra hour of the aide's time. Public and private school officials concurred that their relationship had been cooperative.

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6. South

A rural district in a coastal area converted a school bus into a mobile classroom to serve its one parochial school. The private school principal had ruled out any options that required transportation, because she wanted to disrupt her school schedule as little as possible.

A bus was available, but had to be remodeled at a cost of $3,000. The LEA encountered some obstacles with local government over zoning, parking, and electrical hookups. A special parking permit had to be obtained, and a waiver to put an electrical meter on a utility pole had to be granted. After the zoning board initially turned down the request, the school superintendent became involved in the situation and persisted until an agreement was worked out with the zoning board.

Services commenced around October 1. A maintenance staff person drives the bus from a public school lot to the private school, where it is parked on an adjacent street. Two aides offer Chapter 1 reading and math instruction within the van, which holds about eight students. About 22 students, the same number as last year, are being served. The principal expressed concern that an increase in eligible children could create problems because they are operating a full schedule in the van right now. The principal has also decided not to have the Chapter 1 class on days when the weather is inclement.

Public and private school officials agree that supervision of the aides has become more difficult than it was last year. To supervise them, the principal makes visits during the day, which takes time from her schedule. However, the principal said she is satisfied with the arrangement and had been anxious to cooperate because she wanted the Chapter 1 program.

III. SUMMARY

If a conclusion can be drawn from our survey, it is that with cooperation and determination, the administrators of public and private schools in many places have made the best of a difficult situation.

We cannot gloss over the fact that most of the people we interviewed from both sectors were dissatisfied with the Felton decision and wished that they could continue Chapter 1 services on premises. Although a few may harbor a lingering hope that another court decision or law could restore the status quo, most everyone with whom we spoke accepted that the situation could not be changed and set about early on negotiating

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solutions.

Granted, in some locales, negotiating alternatives was made easier by the fact that not a large number of nonpublic schools were participating in Chapter 1. Other LEAs were fortunate enough to have sufficient carryover money to cover the upfront costs, or to have publicly-owned facilities nearby that could be procured at little or no cost. By contrast, some LEAs that are still grappling with the problem may be in the unenviable situation of being strapped for funds due to budget cuts or of having scores of eligible nonpublic schools to serve.

Even so, we can identify some common denominators shared by the school districts cited above. First, nearly all of them said that they had already enjoyed a positive public-private relationship and that this helped carry them through this difficult period. As a result of the relationship, they did not allow the situation to degenerate into a stalemate. Second, many of them had a determined and energetic Chapter 1 coordinator and/or private school official who worked nearly continuously on the problem until it was settled. The commitment of these types of individuals could be enhanced or impaired, depending on whether the school board and/or archdiocese officials were supportive or contentious. Third, nearly all these school districts started meeting soon after the Felton decision was handed down, instead of waiting to see what the State did or whether a stay would be granted by another court. Fourth, the public and private officials exhibited flexibility: if one route turned up a dead end, they pursued another. In many districts, this open-minded attitude continues, characterized by a willingness of administrators to alter the program next year, if problems arise or the outcomes are less than expected. Fifth, and perhaps most important, the public and private school people in these communities valued the Chapter 1 program; some had been cited as exemplary by the U.S. Department of Education. The public and private school people realized the potential harm to the Chapter 1 program if the confusion over Felton dragged on too long and did not want to lose the program or diminish its effectiveness.

Questions still remain about the appropriate response to Felton. In addition to the legal questions, our survey revealed some common anxieties: How will the auditors view our program? What will happen to the quality of Chapter 1 instruction under the new arrangement? How will we afford any continuing extra costs with Chapter 1 slated for budget cuts under Gramm-Rudman?

The Committee will continue to try to help public and private school officials work through the answers to these questions. Some may require additional or more detailed guidance from the courts, the Department, the States, or the Congress. Others relate to larger issues, such as the need for

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adequate funding of Chapter 1. In the interim, we hope this publication might offer some cause for optimism in those areas where it may have been in short supply in recent months.

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